



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

April 21, 2004

Mr. Karl H. Moeller
Moeller Law Offices
816 Congress Avenue, Suite 1100
Austin, Texas 78701

OR2004-3245

Dear Mr. Moeller:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 199924.

The Jonah Water Special Utility District (the "district"), which you represent, received a request for information relating to a list of matters, including investments, impact fees collected, employees' names and salaries, purchases of trucks and equipment, consultants hired, bids awarded, the sale of a micro-filter plant, meters sold, and "audit operational" information.¹ You claim that the requested information is excepted from disclosure under section 552.103 of the Government Code.

¹You assert that "[a portion of] the request is voluminous to the point of being burdensome, since the [d]istrict does not maintain records in such general terms." You also contend that "[o]ther requests relate not to specific documents or classes of documents, but require the [d]istrict to perform calculations and research specific to the request." We first note that the administrative inconvenience involved in responding to a request for information does not excuse a failure to comply with the Public Information Act (the "Act"), chapter 552 of the Government Code. *See Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 687 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). We agree that the Act does not require a governmental body to answer factual questions, conduct legal research, or create new information in responding to a request. *See Open Records Decision Nos. 563 at 8 (1990), 555 at 1-2 (1990)*. Likewise, the Act does not require a governmental body to take affirmative steps to create or obtain information that is not in its possession, so long as no other individual or entity holds the information on behalf of the governmental body that receives the request. *See Gov't Code § 552.002(a); Open Records Decision Nos. 534 at 2-3 (1989), 518 at 3 (1989)*. But a governmental body must make a good-faith effort to relate a request to information that is within the governmental body's possession or control. *See Open Records Decision No. 561 at 8-9 (1990)*.

You also assert that the requestor has made no arrangements to pay for the research and copying required to respond to this request. However, you do not inform us that the district has provided the requestor with an itemized estimate of charges under section 552.2615. *See Gov't Code § 552.2615*. In any event, the procedures prescribed by section 552.2615 do not relieve a governmental body of its obligations under section 552.301. *See id.* § 552.2615(g).

Initially, we address the district's obligations under section 552.301 of the Government Code. This section prescribes procedures that a governmental body must follow in asking this office to decide whether requested information is excepted from public disclosure. Section 552.301(b) requires the governmental body to ask for the attorney general's decision and state the exceptions to disclosure that it claims not later than the tenth business day after the date of its receipt of the written request for information. *See* Gov't Code § 552.301(b). Section 552.301(e) requires the governmental body to submit to the attorney general, not later than the fifteenth business day after the date of its receipt of the request, (1) written comments stating why the governmental body's claimed exceptions apply to the information that it seeks to withhold; (2) a copy of the written request for information; (3) a signed statement of the date on which the governmental body received the request, or evidence sufficient to establish that date; and (4) the specific information that the governmental body seeks to withhold or representative samples of the information if it is voluminous. *See id.* § 552.301(e)(1)(A)-(D). If a governmental body does not request an attorney general decision as prescribed by section 552.301, the information requested in writing is presumed to be subject to required public disclosure and must be released, unless there is a compelling reason to withhold the information. *See id.* § 552.302; *Hancock v. State Bd. of Ins.*, 797 S.W.2d 379, 381 (Tex. App.—Austin 1990, no writ).

As of the date of this decision, the district has not submitted any information, or a representative sample of any information, that the district seeks to withhold, as required by section 552.301(e). The requested information is therefore presumed to be public under section 552.302 and must be released, unless there is a compelling reason to withhold any of the information. The presumption that information is public under section 552.302 can generally be overcome when the information is confidential by law or third-party interests are at stake. *See* Open Records Decision Nos. 630 at 3 (1994), 325 at 2 (1982). In this instance, the district seeks to withhold the requested information under section 552.103 of the Government Code. Section 552.103 is a discretionary exception to disclosure that protects a governmental body's interests and may be waived. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive Gov't Code § 552.103); Open Records Decision Nos. 665 at 2 n.5 (discretionary exceptions generally), 542 at 4 (1990) (statutory predecessor to Gov't Code § 552.103 subject to waiver). The district's claim under section 552.103 does not provide a compelling reason for non-disclosure under section 552.302. In failing to comply with section 552.301, the district has waived its claim under section 552.103. *See* Gov't Code § 552.007; Open Records Decision No. 663 at 5 (1999) (untimely request for decision resulted in waiver of discretionary exceptions). Therefore, the district may not withhold any of the requested information under section 552.103. Consequently, the district must release all of the information to which the requestor seeks access.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

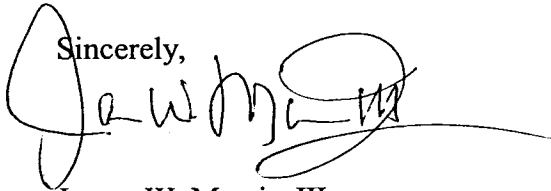
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read 'J W Morris III', with a long horizontal flourish extending to the right.

James W. Morris, III
Assistant Attorney General
Open Records Division

JWM/sdk

Ref: ID# 199924

c: Mr. Carl Lidell
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Georgetown, Texas 78626